

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089**REMARKS**

These Remarks are responsive to the Office Action mailed on March 24, 2006 (the "Office Action"). The Applicant respectfully requests reconsideration of the claim rejections for at least the reasons set forth below.

STATUS OF THE CLAIMS

Claims 39-47, 49-66, and 68-86 are pending in the application, and all claims currently stand rejected.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 39-47, 49-66, and 68-86 35 U.S.C. § 103(a) as allegedly being unpatentable over Keyes (U.S. Pat. No. 6,456,983) in view of Land (U.S. Pat. No. 6,807,533), and in further view the article entitled "How to Monitor Collectors" from Credit Card Management Volume 13, Issue 4, dated July 2000 (hereinafter "Rial"). The present Office Action repeats the characterization of Keyes set forth in the May 5, 2005 Office Action, elaborates upon the prior characterization of Land in the same Office Action, and substitutes Rial for the Culhane reference (U.S. Pat. No. 6,513,018), which was previously relied upon to allegedly remedy the deficiencies of Keyes and Land in the October 19, 2005 Office Action.

As stated in MPEP § 2143, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation to modify the reference or to combine reference teachings, there must be a reasonable expectation of success, and the prior art references must teach or suggest all the claim limitations. See MPEP § 2143. The teaching, suggestion, or motivation to combine or modify the teachings of the prior art to produce the claimed invention must be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See, e.g., *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); and MPEP § 2143.01. The teaching or suggestion to make the claimed combination and the reasonable expectation of success may *not* be drawn from the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

Further, the mere fact that references *can* be combined or modified does not render the resultant combination obvious unless the prior art also suggests the *desirability* of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Finally, as stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

The Applicant respectfully submits that the combination of Keyes, Land and Rial still fails to present a *prima facie* case of obviousness because the references fail to teach or disclose:

- "generating an account metric ... including a weighting according to at least a change in level of delinquency of the account, ... and ... assigning a score to the account agent based on the account metric," as recited in claim 39;
- "identify[ing] a change in level of delinquency of the account ... generat[ing] an account metric ... including a weighting according to at least the reduction in the level of delinquency of the account; and ... assign[ing] a score to the account agent based on the account metric," as recited in claim 58; or,
- "calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent, based at least in part on the change in delinquency," as recited in claims 77 and 82.¹

As such, the combined references do not teach each and every limitation of the claims, and no *prima facie* case of obviousness exists. Furthermore, even if all of the claim limitations are disclosed in the cited references, there is no motivation to combine the cited references, and thus the combination is improper. These traversals are explained in detail below.

¹ The Applicant paraphrases these three limitations and refers to them collectively in this reply. This is done solely for the purposes of convenience and clarity, and is not intended to alter or supplement the meaning of these claim terms.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089Keyes

The Office Action cites to Keyes for a number of features. Most notably, the Office Action alleges that Keyes discloses "generating an account metric based on the step of comparing the baseline status to the updated status, the account metric including a weighting according to at least a change in the level of delinquency of the account." Office Action at 3, *citing* Keyes at col. 5, l. 57 - col. 6, l. 36.

Keyes does not address the issue of evaluating account agent performance in any way, and instead teaches a regime for determining whether it is more worthwhile to keep a group of accounts and try to collect on them, or sell the accounts to other entities at a discount. *See*, Keyes, Abstract; col. 2, ll. 3-9; *and* col. 7, l. 66 - col. 8, l. 7. To do this, Keyes generates historical portfolio information that tracks the payment history from previous delinquent accounts, *id.*, col. 5, ll. 11-22, and calculates a "score" that reflects "the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions." *Id.*, col. 5, ll. 63-65. One factor that is considered in generating this score is "the lapse of time from the last payment made on the subject delinquent account," and another is "how long the subject delinquent account has been in existence." *Id.*, col. 6, ll. 1-4. Keyes also mentions that accounts can be scored, then re-scored when the historical portfolio of the account is "rebuilt" at a later date. *Id.*, col. 6, ll. 4-13. Using this scoring regime, Keyes is able to use historical account data ("liquidation profiles") to determine whether it is worthwhile to keep current delinquent accounts. *Id.*, col. 7, l. 66 - col. 8, l. 7. Keyes does this by comparing the current delinquent account with historical accounts having the same "score," *id.*, col. 9, ll. 1-4, to determine whether the account owner can expect to get a greater return by selling the account to a third party, or keeping it and continuing to try to collect on it. *Id.*, col. 9, l. 39 - col. 10, l. 19. While Keyes does disclose the analysis of the *static* level of delinquency at a particular time, it does *not* appear use the actual *change* in delinquency for any calculation. In fact, despite the Office Action's statement that Keyes uses an "account metric including a weighting according to at least a change in the level of delinquency of the account," Office Action at 3, Keyes

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET No. 47004.000089

actually *never does state* that the change in level of delinquency (*e.g.*, a change from three months delinquent to one month delinquent, *etc.*) is used as a weighting factor. The Office Action appears to extrapolate this from the disclosure in a way that is not clear from the Office Action, and in a way that does not appear to have any unambiguous support from the prior art reference itself. As such, this feature does not appear to actually be present in Keyes.

Land

The latest Office Action alleges that:

Land teaches receiving baseline account status as well as updated account status (column 12, line 37-49 and column 14, lines 8-15 and Figures 18-20). Land teaches managing account receivables in which credit officers receive a performance evaluation for collecting on delinquencies which are monitored and become part of the credit officer's performance evaluation (column 11, lines 45 thru column 12, lines 3). An account metric is generated by a percentage of available account receivables as well as forecasted collection are monitored and reported (column 11, lines 45-60).

The first citation, to column 12, lines 37-49, merely states how accounts are determined to be delinquent and aged. The citation to column 14, lines 8-15 describes Figure 20, which provides historical account information. The citation to Figures 18-20 discloses three illustrations of screens showing customer account information. Finally, the pair of citations to column 11, lines 45 through column 12, line 3 discuss how to evaluate credit officers. In this portion of the disclosure, Land describes two conventional evaluation techniques: collections as a percent to available receivables (that is, the amount collected compared to the total amount due), and percent of forecasted collections (which are used to measure the credit officer's ability to set accurate collection targets). Land also describes credit officers being reviewed based on the "delinquency ratio," which is the ratio of number of past due loans to the total number of loans serviced. *Id.*, col. 11, ll. 65-67.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

Despite the foregoing disclosures, Land says nothing about using the measure of the change in delinquency of an account (which the Office Action appears to suggest is calculable from Land's disclosure of historical account data) in conjunction with the separate portion of Land that deals with how credit officers are evaluated. Land merely discloses conventional metrics for evaluating account agents. As such, even if it is assumed for the sake of argument that the Land system can be used to calculate the change in delinquency of an account over time, it does not provide *any* suggestion that this particular metric would be useful in combination with the task of evaluating account agents. Indeed, in describing the various conventional metrics for evaluating account agents, Land does not state that these metrics are deficient or that they can be modified or supplemented in any way. The Office Action admits this: "Keyes and Land fail to teach assigning a score to the account agent based on the account metric."² Office Action at 4.

Rial

The Office Action now cites to Rial for the apparent teaching of "agent scoring." Specifically, the Office Action states that "Rial teaches a method for monitoring collectors in which individual collectors are monitored by supervisors and given a score," and these scores "are included in employee performance evaluations." Office Action at 4, citing Rial at pp. 1 and 3. While Rial does discuss "scoring" collection agents, however, it does so in the context of evaluating the agents' aptitude at communicating with customers, and provides no insight into how to "score" an agent based on any kind of account metric.

Rial describes common regimes for "call monitoring" — that is, "the practice of observing how agents handle calls in order to improve their skills and to enhance customers' experience with the company." Rial at 1. In this practice, supervisors listen

² The Examiner appears to refer to the "account metric" of the pending claims as the limitation of "weighting according to at least a change in level of delinquency of the account."

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

in on the agents' calls, and provide feedback on how the agents' control conversations, apply company policies, comply with federal and state laws. *Id.* at 3. In addition, Rial discloses that call-center supervisors can rate the agents' abilities to "identify the customer, verify information, and practice effective listening skills" on a scale, *id.*, and that "[c]all-monitoring scores or other collector measurements may also be included in employee performance evaluations." *Id.* Like Keyes and Land, however, Rial says and suggests absolutely *nothing* about using the change in the level of delinquency of an account as a metric for evaluating the performance of an account agent.

NONE OF THE CITED REFERENCES DISCLOSE USING A CHANGE IN
DELINQUENCY TO EVALUATE ACCOUNT AGENT PERFORMANCE

A rejection under 35 U.S.C. §103 is proper only when the references teach each and every limitation of the claimed invention. *See, e.g.*, MPEP §2143. The Office Action does not satisfy this requirement, and therefore reconsideration and allowance are respectfully requested.

As explained above, none of the cited references disclose or suggest any situation in which an account agent is assigned a score based on a metric derived from the change in delinquency of an account, as required by all of the independent claims. Keyes, at best, simply discloses using statistical data such as how long an account has been delinquent to determine whether an account — not an account *agent* — is worth keeping or selling, and says nothing about evaluating account agents. Land, at best, describes conventional account agent performance evaluation regimes, and also discloses (in contextually separate portions of the disclosure) that historical account delinquency information may be collected or observed. Land does not tie these two portions of the disclosure in any way that would lead a person of ordinary skill in the art to conclude that Land suggests that a change in delinquency can be used to measure account agent performance. Finally, Rial discusses scoring account agents based on observing how they perform on the telephone with customers, and says nothing about using account metrics — much less a change in delinquency — to evaluate account agent performance.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

Even taken together, the references still fail to recite all of the claim limitations. Ultimately, the Office Action argues that it would be obvious to associate the scored accounts and liquidation profiles of Keyes (which are for *accounts*, not account *agents*) with the account agent evaluation regime of Land, and therefore the prior art discloses the claimed feature of assigning a score to an account agent using a metric based on a change in delinquency of an account. Office Action at 4. However, as explained above, *Keyes does not disclose that the change in level of delinquency of an account is used to score the account*. The Office Action's citation to column 5, line 57 through column 6, line 36 does not include this feature — rather, it is pure speculation. As such, even if the references are properly combined, they fail to disclose or suggest the feature of assigning a score to an *account agent* based on a metric derived from the change in delinquency of an account, and the requirements for a prima facie case of obviousness are not satisfied. See MPEP §2143.

THERE IS NO MOTIVATION TO COMBINE THE REFERENCES

None of the cited references disclose any kind of account agent evaluation or scoring regime in which the account agents are evaluated based upon the change in the delinquency level of an account. The fact that none of the references simply states this allegedly obvious feature is compelling evidence of non-obviousness, because the Office Action can not simply combine the references to obtain the claimed invention. Rather, the Office Action must combine the references and simultaneously *modify* them by taking scores associated with *accounts* and applying them to account *agents* to obtain the claimed features. However, the Office Action fails to set forth any substantiated or logical motivation in the prior art to simultaneously combine and modify the references in this manner.

The Office Action alleges that “[i]t would have been obvious...that the teaching of Keyes could have been modified to include the credit officer performance evaluation teachings of Land because it provides an efficient manner to monitor the collectors of delinquent accounts.” In making this combination, the Office Action actually modifies the references by converting Keyes' teachings regarding *account* evaluation by applying

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

the *account* scores to Land's account *agent* evaluation: "[t]he delinquent accounts taught by Keyes already contain weighted scoring parameters and therefore associating the scoring of the account and liquidation profile with a credit officer (agent) would result in increased efficiency by the agent and a greater probability of collecting on delinquent account as intended by Keyes." Office Action at 4. The final step in the Office Action's combination of references is to add Rial. In support, the Office Action states that "it would have been obvious...to modify the teachings of Keyes and the inventive teachings of Land to include the agent scoring teachings of Rial, because providing a score in the agent's evaluation provides an efficient manner of giving an incentive to the agent." Office Action at 4. Rial does not disclose any type of scoring system that associates the change in delinquency of an account with an account agent's performance, and so this reference appears to be added solely to tie the term "score" with account agent evaluations. The addition of Rial does not correct the improper combination and modification of Keyes and Land, as explained below, and requires no further elaboration at this point.

This combination and modification of Keyes and Land ignores the distinct differences between the process and purpose of evaluating *accounts* and evaluating account *agents*, and, not surprisingly, suffers from several deficiencies. First, as covered in the prior section, Keyes does not disclose the use of a change in delinquency to score the accounts. Second, the Office Action appears to follow the logic that any and all factors that are useful for scoring an account are also useful for scoring an account agent. This is not true, and there is no basis in the prior art for suggesting that such a modification would be successful.

**The Combination Renders Land Unsatisfactory for its
Intended Purpose**

Keyes scores accounts based upon how likely it is that the bank will actually recover the delinquent funds due to those accounts. The Keyes "score" is "reflective of the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions." Keyes at col. 5, ll. 62-65. If the

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

score is high enough, the bank will keep the account because it is likely to recover the funds due, but if the score is too low, the bank will sell the account to a third party. *See*, Keyes at col. 3, ll. 55-67. According to the Office Action's logic for modifying Keyes with Land, these same scores can also be applied directly to evaluating account agents tasked with recovering the funds due on the delinquent accounts. Office Action at 4. But if the Office Action's logic is followed, then it achieves an absurd result. Namely, account agents will receive higher "scores" for collecting on accounts that are *more likely to be paid in the first place*. That is, account agents would be given higher scores doing an *easier* task — not for excelling at their jobs. Not only would this be useless in its own right because it would not reflect the skill of the account agent, but it also would be counterproductive to the conventional account agent evaluation regimes set forth in Land. Thus, this combination would render Land unsatisfactory for the purpose of evaluating account agent performance.

There is No Reasonable Expectation of Success

In view of the foregoing analysis, it will also be seen that the alleged modification to apply the scores of Keyes to the account agent evaluation of Land also contradicts the very alleged motivations that the Office Action relies upon to make the combination. First, there is no basis in the prior art for the statement that the combination would achieve the alleged result of "increased efficiency by the agent." This allegation does not make sense. How is giving an account agent a higher score for collecting on an "easy" account (one that is already likely to be collected) associated in any way with the agent's efficiency? The "score" in Keyes has nothing to do with an agent's performance, but is instead based on various statistics relating to the account. Even if there is any association, then giving agents high scores for performing easier tasks would be just as likely to instill laziness as it would be to motivate them to perform more efficiently. As such, there is no reasonable expectation that the combination and modification of the references would obtain the claimed result of increasing account agent efficiency.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

It is also incorrect that the combination would provide "greater probability of collecting on a delinquent account as intended by Keyes." To begin with, Keyes is directed towards obtaining a better probability of predicting which accounts are likely to be collected upon, not actually improving the probability of collecting on delinquent accounts, so the stated motivation is not actually attributable to Keyes.³ Furthermore, nothing in the combination suggests that collection rates will improve. Again, how is giving an account agent a higher score for collecting on an "easy" account associated in any way with the likelihood of collecting on the account? As noted above, if there is any connection, it is just as likely that giving high scores for collecting on easy accounts will instill laziness as it would be to improve the agents' probability of collecting on the accounts. Once again, there is no reasonable expectation that the combination and modification of the references would obtain the claimed result of increasing the probability of collecting on delinquent accounts.

The Combination is Based on Impermissible Hindsight

In view of these problems with the combination of Keyes and Land, it appears that the combination of references is not based upon any motivation in the references or in the prior art, but is instead based upon the teachings of the present disclosure. First, the combined references do not teach all of the claim limitations unless one were to somehow extrapolate from Keyes disclosure that it actually uses the change in delinquency of an account as a statistical factor in analyzing accounts. This conclusion appears to be mere speculation, and finds no clear support in Keyes itself. Second, the combination and modification of Keyes and Land in which the *account "scores"* of Keyes are used to evaluate *account agent* performance is clearly an "apples-to-oranges" comparison, and, as such, suffers from several flaws because it renders the prior art

³ Stated differently, Keyes is directed towards identifying the values of its assets (the delinquent accounts) and keeping the most valuable ones, not increasing the values of its assets. In Keyes, the values of the assets are measured by the predicted ability to collect the delinquent accounts.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

subjected to the proposed combination unsuitable for its intended purpose, and has finds no logical motivation in the prior art. In view of these deficiencies, it appears that the only possible source for a motivation to combine and modify the references lies in the present disclosure.

In summary, the alleged combination and modification of Keyes and Land is improper for at least three reasons. To begin with, as explained above, the combination is improper because it would render the portion of Land relating to evaluating account agents (which is the portion relied upon for the rejection) unsuitable for its intended purpose because it would reward account agents for collecting on delinquent accounts that are more likely to be collected upon in the first place. *See* MPEP §2143.01(V). Second, the combination is improper because there is no motivation in the prior art to combine and modify the references as proposed, because doing so would not obtain the benefits that allegedly provide the motivation in the first place — this suggests not only that there is no reasonable expectation that the proposed combination would be successful, but also that the alleged motivation did not exist in the first place. *See* MPEP §2143.02 and 2143.01(I). Finally, the combination is improper because the prior art fails to provide any express motivation to combine the references, and the alleged inherent motivation to combine the references proves to be illogical, thus the proposed combination must necessarily arise as a result of impermissible hindsight based upon the disclosure of the present invention. *See* MPEP §2145(X)(A).

EVIDENCE OF NON-OBVIOUSNESS

The Applicant provided, in its August 4, 2005 Request for Reconsideration, a Declaration under 37 C.F.R. § 1.132 of Dr. William F. Mann III (the "Mann Declaration") as additional evidence of non-obviousness of the claimed subject matter. The Mann Declaration was repeated in the Applicant's January 6, 2006 Request for Reconsideration. While the Mann Declaration was submitted with the previous replies, it is fully applicable to the present rejection of the claims, and therefore it is incorporated herein by reference. The Mann Declaration sets forth compelling evidence of non-obviousness, and fully satisfies the requirements forth in MPEP §§ 716.03.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

Neither of the last two Office Actions have addressed, or even mentioned, the Mann Declaration, and therefore it appears not to have been considered in making the rejections set forth therein. As set forth in the Manual of Patent Examining Procedure, the failure to consider this evidence is improper: "[a] determination under 35 U.S.C. § 103 should rest on all the evidence and should not be influenced by any earlier conclusion." MPEP § 2144.08(III).

It is respectfully submitted that the Mann Declaration rebuts and invalidates the combination of the references applied against the present invention. Furthermore, this factual evidence *once again* stands wholly un rebutted by the Patent Office. For this additional reason, the Applicant requests reconsideration and allowance of the pending claims.

CONCLUSION

The Applicant respectfully submits that the application is in condition for allowance, and therefore requests reconsideration and notice of allowance. If the Examiner believes that prosecution might be advanced by discussing the application with Applicant's counsel, in person or over the telephone, Applicant's counsel would welcome the opportunity to do so.

No fees are believed to be due in conjunction with this filing, however, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206 for any required fees.

PATENT APP. NO. 09/901,078

RESPONSE TO 3/24/06 OFFICE ACTION
ATTORNEY DOCKET NO. 47004.000089

Respectfully submitted,

HUNTON & WILLIAMS LLP

Dated: June 15, 2006

By:



Michael P.F. Phelps
Registration No. 48,654

HUNTON & WILLIAMS LLP
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
703.714.7472 (Direct Dial)
202.955.1500 (Main Line)
202.778.2201 (Facsimile)